
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 103D-709, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§103D-709 Administrative proceedings for review. (a)

4 The several hearings officers appointed by the director of [the
5 ~~department of~~] commerce and consumer affairs pursuant to section
6 26-9(f) shall have jurisdiction to review and determine de novo,
7 any request from any bidder, offeror, contractor, or person
8 aggrieved under section 103D-106, or governmental body aggrieved
9 by a determination of the chief procurement officer, head of a
10 purchasing agency, or a designee of either officer under section
11 103D-310, 103D-701, or 103D-702.

12 (b) Hearings to review and determine any request made
13 pursuant to subsection (a) shall commence within twenty-one
14 calendar days of receipt of the request. The hearings officers
15 shall have power to issue subpoenas, administer oaths, hear
16 testimony, find facts, make conclusions of law, and issue a
17 written decision [~~which~~] that shall be final and conclusive
18 unless a person or governmental body adversely affected by the



1 decision commences an appeal in the circuit court of the circuit
2 where the case or controversy arises under section 103D-710.

3 (c) Only parties to the protest made and decided pursuant
4 to sections 103D-701, 103D-709(a), 103D-310(b), and [H]103D-
5 702(g) [H] may initiate a proceeding under this section. The
6 party initiating the proceeding shall have the burden of proof,
7 including the burden of producing evidence as well as the burden
8 of persuasion. The degree or quantum of proof shall be a
9 preponderance of the evidence. All parties to the proceeding
10 shall be afforded an opportunity to present oral or documentary
11 evidence, conduct cross-examination as may be required, and
12 argument on all issues involved. The rules of evidence shall
13 apply.

14 (d) The several hearings officers appointed by the
15 director of commerce and consumer affairs pursuant to section
16 26-9(f) shall have exclusive jurisdiction to review, and
17 determine de novo, any request from any bidder, offeror,
18 contractor, or person aggrieved by a determination under section
19 103D-310 or 103D-701 relating to the solicitation or award of a
20 contract under section 103D-302 or 103D-303; provided that the
21 estimated value of the contract is less than \$5,000,000.



1 The party initiating the proceeding shall pay to the
2 department of commerce and consumer affairs a cash or protest
3 bond in an amount equal to \$10,000 plus one per cent of the
4 total estimated value of the contract that is the subject of the
5 proceeding. If the initiating party prevails in the
6 administrative proceeding, the cash or protest bond shall be
7 returned to that party. If the initiating party does not
8 prevail in the administrative proceeding, the cash or protest
9 bond shall be forfeited to the department of commerce and
10 consumer affairs and shall be deposited into the general fund.

11 For the purposes of this subsection, "estimated value of
12 the contract" means the lowest responsible and responsive bid
13 under section 103D-302, or the bid amount of the responsible
14 offeror whose proposal is determined in writing to be the most
15 advantageous under section 103D-303, as applicable.

16 ~~[(d)]~~ (e) The hearings officers shall ensure that a record
17 of each proceeding which includes the following is compiled:

- 18 (1) All pleadings, motions, intermediate rulings;
19 (2) Evidence received or considered, including oral
20 testimony, exhibits, and a statement of matters
21 officially noticed;
22 (3) Offers of proof and rulings thereon;



1 (4) Proposed findings of fact; and

2 (5) A recording of the proceeding which may be transcribed
3 if judicial review of the written decision is sought
4 under section 103D-710.

5 [~~(e)~~] (f) No action shall be taken on a solicitation or an
6 award of a contract while a proceeding is pending, if the
7 procurement was previously stayed under section 103D-701(f).

8 [~~(f)~~] (g) The hearings officer shall decide whether the
9 determinations of the chief procurement officer or the chief
10 procurement officer's designee were in accordance with the
11 Constitution, statutes, rules, and the terms and conditions of
12 the solicitation or contract, and shall order such relief as may
13 be appropriate in accordance with this chapter.

14 [~~(g)~~] (h) The policy board shall adopt such other rules as
15 may be necessary to ensure that the proceedings conducted
16 pursuant to this section afford all parties an opportunity to be
17 heard."

18 SECTION 2. Section 103D-710, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§103D-710 Judicial review.** (a) [~~Only parties~~] Parties
21 to proceedings under section 103D-709 who are aggrieved by a
22 final decision of a hearings officer under that section may



1 apply for judicial review of that decision. The circuit court
2 shall have exclusive jurisdiction to review and determine de
3 novo, any request from any bidder, offeror, contractor, or
4 person aggrieved by a determination under section 103D-310 or
5 103D-701 relating to the solicitation or award of a contract
6 under section 103D-302 or 103D-303; provided that the estimated
7 value of the contract is \$5,000,000 or greater. The proceedings
8 for review shall be instituted in the circuit court of the
9 circuit where the case or controversy arises.

10 (b) An application for judicial review shall not operate
11 as a stay of the decision rendered under section 103D-310, 103D-
12 701, or 103D-709.

13 (c) Within twenty calendar days of the filing of an
14 application for judicial review, the hearings officer or chief
15 procurement officer or designee, as applicable, shall transmit
16 the record of the administrative proceedings to the circuit
17 court of the circuit where the case or controversy arises.

18 (d) The review shall be scheduled as expeditiously as
19 practicable. It shall be conducted on the record of the
20 administrative proceedings, and briefs and oral argument. [Ne]
21 Except as provided in subsection (a), no new evidence shall be
22 introduced, except that the circuit court may, if evidence is



1 offered which is clearly newly discovered evidence and material
2 to the just decision of the appeal, admit the same.

3 (e) Upon review of the record the circuit court may affirm
4 the decision of the hearings officer issued pursuant to section
5 103D-709 or the chief procurement officer or designee issued
6 pursuant to section 103D-310 or 103D-701, as applicable, or
7 remand the case with instructions for further proceedings; or it
8 may reverse or modify the decision and order if substantial
9 rights may have been prejudiced because [~~the administrative~~]
10 previous findings, conclusions, decisions, or orders are:

- 11 (1) In violation of constitutional or statutory
12 provisions;
- 13 (2) In excess of the statutory authority or jurisdiction
14 of the chief procurement officer or designee or head
15 of the purchasing agency;
- 16 (3) Made upon unlawful procedure;
- 17 (4) Affected by other error of law;
- 18 (5) Clearly erroneous in view of the reliable, probative,
19 and substantial evidence on the whole record; or
- 20 (6) Arbitrary, or capricious, or characterized by abuse of
21 discretion or clearly unwarranted exercise of
22 discretion.



1 (f) Any party aggrieved by the decision of the circuit
2 court may appeal in accordance with part I of chapter 641 and
3 the appeal shall be given priority.



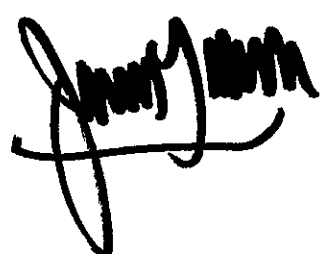
4 (g) As used in this section, "estimated value of the
5 contract" means the lowest responsible and responsive bid under
6 section 103D-302, or the bid amount of the responsible offeror
7 whose proposal is determined in writing to be the most
8 advantageous under section 103D-303, as applicable."

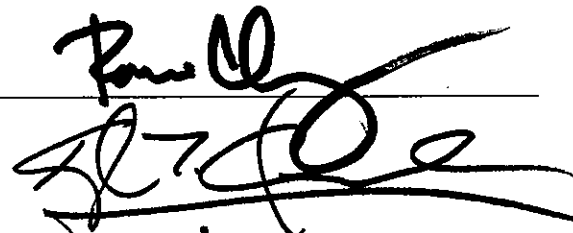
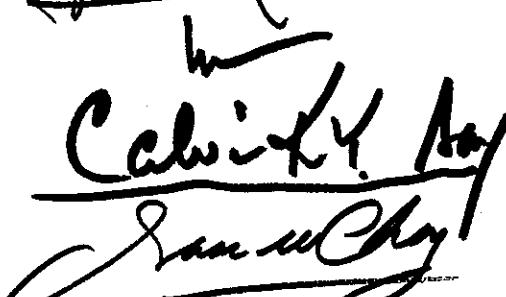

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval.

15




INTRODUCED BY:



H.B. NO. 2119

Report Title:

Procurement; Protests; Administrative Review; Judicial Review

Description:

Gives exclusive jurisdiction to DCCA hearing officers to hear protests of solicitations or awards of contracts with an estimated value of less than \$5,000,000. Gives the circuit court exclusive jurisdiction to hear protests of solicitations or awards of contracts with an estimated value of \$5,000,000 or more.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

